

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1177 ^B _{PL}

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

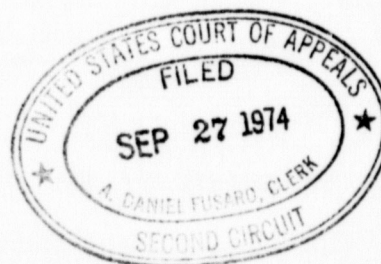
DOCKET NO. 74-1177

JOSEPH MARANDO,

Appellant.
----- x

A P P E N D I X

NORMAN I. CAPLAN
Attorney for Appellant
535 Fifth Avenue
New York, New York 10017



PAGINATION AS IN ORIGINAL COPY

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Relevant Docket Entries.....	i.i.
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RELEVANT DOCKET ENTRIES

- Jan. 21, 1974 Filed copies of docket entries and notice of appeal.
- Feb. 7, 1974 Received docket fee.
- Feb. 11 Filed record (Original papers of District Court).
- June 19, 1974 Filed motion for leave to be relieved as counsel on appeal and to appoint NORMAN I. CAPLAN as counsel of appellant and for leave to extend time to perfect appeal.
- July 16, 1974 Filed affidavit in support of motion to be relieved as counsel, appellant
- July 17, 1974 Filed order granting motion to be substituted as retained counsel on appeal in the place and stead of George S. Meissner, Esq.
- August 12, 1974 Filed affidavit in support of motion for an extension of time to perfect appeal, appellant, p/s.
- August 13, 1974 Filed order; appellant's brief and appendix by 9-16-74 w/dismissal in default; U.S. brief by 10-16-74; argument week of 10-21-74

JUDGE WYATT

73 CRIM. 10370

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	John M. Walker, AUSA
JOSEPH MARANDO	264-6474
	For Defendant:
	George S. Meisner, Esq.
	16 Court St.
	Brooklyn, N.Y.

(12) ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		1/11/74	Meisner	✓	✓
Clerk,		1/24/74	Trues		✓
Marshal, 113 ✓					
Attorney,					
XEROXED DOCKET T.18					
XEROXED Sec. 371					
Conspiracy to make extensions					
and collections of credit by					
means of extortion.					
(One Count)					

DATE	PROCEEDINGS
11-15-73	Filed information and waiver of indictment. (Superseded by 73 Cr592) Deft.(atty. present) Pleads guilty. Pre-sentence investigation ordered Sentence Jan. 11, 1974 at 2:30 P.M. in Room 10. Deft. released on his own recognizance. Wyatt, J.
1-11-74	Filed Judgment and Order of Probation. It is Adjudged that the Deft. is sentenced FIVE (5) YEARS. Execution of the sentence of imprisonment is suspended. Deft. is placed on probation for a period of FIVE (5) YEARS, subject to the standing probation order of this court.-- WYATT, J.
1-21-74	Filed Notice of Appeal from Judgment of conviction entered on the 11th day of Jan 1974. Mailed notice to Deft and US Atty.
1-28-74	Filed transcript of record of proceedings, dated 11-15-73
2-11-74	Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.A. 2nd Circuit, this 11th Day of Feb. 1974, and Index to the Record on Appeal.
7-16-74	Filed transcript of record of proceedings, dated 1-11-74

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
vs. :
JOSEPH MARANDO, :
Defendant. :
-----X

73 Cr. 1037

Before:

HON. INZER B. WYATT,

District Judge

New York, N. Y.
January 11, 1974 - 2:30 p.m.

APPEARANCES:

PAUL J. CURRAN;
United States Attorney for the Southern District
of New York
BY: JOHN M. WALKER, Jr.,
Assistant United States Attorney
GEORGE S. MEISSNER, Esq.,
Attorney for Defendant.

Also Present:

NORMAN I. CAPLAN, Esq.

- - -

MR. WALKER: Let me explain that yesterday I had a discussion with Mr. Caplan who said that he was representing Mr. Joseph Marando and intended to represent him in this matter before your Honor.

I should point out that since Mr. Marando's plea in this case he has been indicted in a subsequent case charging him with conspiracy and stock manipulation.

Mr. Caplan appeared for Mr. Marando in that matter.

I pointed out to Mr. Caplan that Mr. Meissner was still attorney of record in this matter before your Honor and I indicated to him that if he intended a substitution that he should have Mr. Meissner present and make an application before this Court.

I also indicated to him yesterday that I was prepared, the government was prepared, to have Mr. Marando sentenced forthwith on the scheduled date. He indicated that he was going to apply to the Court for a two-week adjournment to enable him to prepare motions to have Mr. Marando withdraw his plea of guilty in this case.

I indicated to him that the government would firmly oppose any such motion and would oppose the adjournment and would ask that Mr. Marando be sentenced.

At that point, he left. He was accompanied, by the way, by another attorney, Mr. Flanagan, and the two of them

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2 left my office. That is the matter as I see it now.

3 THE COURT: Mr. Walker, do I have the duty now
4 to issue a bench warrant?

5 MR. WALKER: Yes, your Honor. As I see it, Mr.
6 Marando is not present. He was notified the Court had
7 scheduled this appearance for 2:30 and I would apply to have
8 a bench warrant issued for this defendant.

9 THE COURT: Yes, I think so. The application is
10 granted. It is now 20 minutes to 3; the sentence was sched-
11 uled for 2:30. There is no reason why Mr. Marando should
12 not be here and I think under the circumstances I have no
13 alternative but to issue a bench warrant. I hope the
14 marshalls will execute it promptly. I will be in tomorrow
15 if they can find Mr. Marando and bring him here.

16 MR. WALKER: Very well, your Honor, I will see
17 that this bench warrant is executed forthwith.

18 THE COURT: All right.

19 (Recess.)

20 MR. WALKER: Government ready.

21 THE COURT: Mr. Marando and his counsel are
22 here now?

23 MR. WALKER: Yes.

24 THE COURT: All right.

25 MR. WALKER: Your Honor, shortly after --

THE COURT: I suppose I can vacate the issuance of the bench warrant.

MR. WALKER: Yes, your Honor.

THE COURT: All right. Mr. Meissner, what is your motion?

MR. MEISSNER: May it please your Honor, I want to ask the Court's indulgence to excuse me for being a few minutes late because I was waiting for Mr. Caplan. Mr. Marando was in the bathroom and Mr. Walker didn't know it.

THE COURT: All right.

MR. MEISSNER: I needed Mr. Caplan here today.

May it please your Honor, at this time I am making an application for permission to withdraw and have Mr. Caplan substituted as the attorney for Mr. Marando.

THE COURT: All right. Does the government have any objection?

MR. WALKER: I have no objection to that motion.

THE COURT: All right.

Mr. Caplan, are you prepared to file a notice of appearance?

MR. CAPLAN: Your Honor, at this time I am going to appear pursuant to an agreement with Mr. Meissner as counsel for Mr. Marando. The purpose of my appearance will be noted for the record that after discussion with Mr. Meissner of the

2 case and events, Mr. Marando has advised Mr. Meissner that
3 he wishes to withdraw his plea. Mr. Meissner has represented
4 Mr. Marando through the entire trial and I will --

5 THE COURT: There wasn't any trial in this matter,
6 there was a plea of guilty.

7 MR. CAPLAN: In this matter and through another
8 trial. I am representing Mr. Marando in another case and
9 I was retained about ten days ago.

10 I would like a month's adjournment to prepare
11 papers to submit to you for an application to change the
12 plea but since I am not familiar with what has occurred here
13 and I am not familiar with the record, Mr. Meissner will
14 still speak for Mr. Marando with respect to what occurs
15 here today but I will note my appearance and let Mr. Meissner
16 handle the matter for me today.

17 MR. WALKER: Your Honor, I would object to this. We
18 have got to have one counsel, don't we?

19 THE COURT: Where do we stand?

20 MR. CAPLAN: I don't know, Judge. The situation
21 is this: It is on for sentencing. I am going to appear and
22 ask you to adjourn the matter, to ask you to adjourn the
23 matter and submit papers for a new plea. I don't have the
24 papers or the information or the records to make that applic-
25 ation today. That is my application.

1 THE COURT: Your application is what?

2 MR. MEISSNER: To adjourn this matter for 30 days
3 to permit me to make an application to allow Mr. Marando to
4 withdraw his plea.
5

6 THE COURT: That application is denied. Mr. Meissner,
7 without prejudice to that which may develop in the future,
8 your application to relieve is also denied.

9 I am going to proceed to sentence today.

10 Does the government have anything to say in con-
11 nection with sentence?

12 MR. MEISSNER: May it please your Honor, before
13 the government speaks, I would like to advise the Court of
14 some of the reasons involved, as I understand it, for the
15 application made by Mr. Caplan, because it appears to be
16 a very serious situation and I think that at least the
17 Court should be apprised of some of the facts as I understand
18 them, and at least consider it in connection with the ruling.

19 The instant case, as your Honor will recall, was
20 an eight-count extortion indictment --

21 THE COURT: No, this is an information.

22 MR. MEISSNER: That's right, I am talking about the
23 original indictment, it is an eight-count extortion indict-
24 ment.

25 THE COURT: I remember.

MR. MEISSNER: After long negotiations with Mr. Walker, we agreed to take a plea to an information --

THE COURT: Yes.

MR. MEISSNER: -- alleging a conspiracy by Mr. Marando in connection with an extortious loan.

The key people involved in this case, the key government witnesses, and the only three government witnesses that I know to have firsthand information concerning the facts alleged in the information and in the original indictment, is a Mr. Schiffman, a Mr. Scheer and a Mr. Miller. Mr. Schiffman was indicted in several other cases. He subsequently took a plea, I believe in two cases, and has been a government witness both in the original trial of Mr. Marando and I believe he has been a witness only recently in this building before another judge.

The other two gentlemen, and I use that word very liberally, are two government witnesses who were never indicted for anything. The three together were the prime movers in numerous frauds, schemes, grand larcenies, income tax evasions and every possible crime that we can possibly think of.

The government is fully aware of these circumstances.

As to Mr. Schiffman, based on the testimony that he gave in the trial against Mr. Marando, some of which testimony

1 was abstracted by Mr. Marando himself while he was in
2 the hospital awaiting sentence here, and I believe he told
3 me that he sent that to his probation officer, where he
4 clearly indicates lies and perjured testimony, vis-a-vis
5 other government witnesses and vis-a-vis other statements
6 made by Mr. Schiffman, the two government witnesses that
7 were never indicted, and there is numerous perjury, lies,
8 false statements, which also has been, I understand, set
9 forth by Mr. Marando where he refers each statement to another
10 statement made before another Court.
11

12 As to these two particular government witnesses, I,
13 as an officer of the Court, informed the U.S. Attorney's
14 office when Mr. Sullivan was the Assistant U.S. Attorney
15 in the case, that I, as an officer of the Court, had personal
16 knowledge that they had committed perjury before an SEC civil
17 proceeding, in this building, and I had asked at that time
18 Mr. Sullivan to take a document, send it to the FBI labor-
19 atory in order to determine something about this perjury com-
20 mitted by government witnesses.

21 Subsequent to that I obtained evidence, and I believe
22 it is known to the U.S. Attorney's office, of an affidavit
23 given by one of these two gentlemen, a Mr. Miller, to the SEC
24 while he was a government witness cooperating with the gov-
25 ernment in which he perjured himself and made statements

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which are known by the U.S. Attorney's office to be perjurous.

Your Honor, the events of the last year in connection with the cases involving Kelly, Andrews & Bradley and Joseph Marando have been of the most unusual nature, especially the handling of these cases by the U.S. Attorney's office, the handling of witnesses and the handling of --

MR. WALKER: Your Honor, I object to these statements. First of all, I don't see the purpose of this application. I don't even know what the application is, and now he's calling into question the integrity of our office and I just think he's going too far.

THE COURT: Well, Mr. Walker, I will give you a chance to defend them. But I have to listen to counsel.

I will.

MR. MEISSNER: As a matter of fact, your Honor, during the course of the six-week trial in which Mr. Marando was involved, I made these same statements on the record and it is my recollection that at no time did Mr. Walker ever say anything that these statements were not correct or true. His position at all times, that I can recollect, was that it was a collateral issue or was a trial inside of a trial, and it shouldn't be part of the proceeding at that time.

But, your Honor, what has happened here is that I

1 have received numerous calls from prominent attorneys over
2 the past few weeks where I have learned that in the course
3 of investigating other matters involving some of the same
4 principals of Kelly, Andrews & Bradley, staff members of the
5 U.S. Attorney's office constantly tried to offer deals or
6 offer some help for these clients of these attorneys if
7 their client would only produce some evidence against im-
8 portant political people in Brooklyn.

9
10 May it please your Honor, I was born in Germany
11 under Hitler. I was counsel during the Army-McCarthy hear-
12 ings. I have never, in everything that I know of justice
13 in Hitler Germany, of what happened to the court systems and
14 to everything in this country during the McCarthy era, seen
15 the type of intimidation, the type of pressure used for
16 apparent political purposes.

17 THE COURT: What has this got to do with the matter
18 before me now, which is the sentence of Mr. Marando?

19 MR. MEISSNER: What it has to do --

20 THE COURT: I don't even know what your application
21 is. But your application first was to be relieved as counsel.

22 MR. MEISSNER: That's right, your Honor.

23 THE COURT: And I felt obliged to deny that.

24 MR. MEISSNER: I am getting to that, your Honor.

25 Apparently the U.S. Attorney's office or, as it is

2 quoted in the newspapers, high sources in the Justice Depart-
3 ment have given information to the newspapers in connection
4 with an indictment which was pending at that time and which
5 I am informed came out yesterday. Apparently my name has
6 been thrown around in order to link it up as part of this
7 plot against the Democratic organization of Kings County.

8 Apparently I am informed that the gentlemen who
9 represent Mr. Marando in another matter were told by the
10 U.S. Attorney's office, just as many other attorneys were
11 who came up with clients in unrelated matters, that if they
12 could get Mr. Marando to do something so they can get certain
13 politicians in Brooklyn, then possibly we can convert Mr.
14 Marando from the bad man he is to a saint for the govern-
15 ment.

16 Your Honor, in view of all of these circumstances,
17 in view of the fact that I believe there has been a conspir-
18 acy here in all the related matters and unrelated matters to
19 use Mr. Marando as well as other defendants and witnesses
20 in other proceedings, especially involving the Kelly, Andrews
21 principals, in view of the fact that even my name has been
22 thrown into this thing, and I am sure your Honor must
23 have seen some of these articles that appeared --

24 THE COURT: No, I have been in Europe for three
25 weeks, I haven't seen any articles.

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2 MR. MEISSNER: I wish I was with your Honor. Un-
3 fortunately my wife was here and so were my children.

4 THE COURT: No, I have been in Vienna and Paris and
5 haven't been thinking about the courthouse. So I don't know
6 anything about it.

7 MR. MEISSNER: Well, your Honor, in view of this
8 entire -- I don't know what to call it -- plot, conspiracy or
9 whatnot to try to get people completely unrelated and who are
10 not parties to this proceeding, I don't feel in good conscience
11 that I can continue as Mr. Marando's counsel.

12 But even more important than that, your Honor, as
13 part of the discussions that we had in connection with this
14 plea, I had asked Mr. Walker for a guarantee or pledge that
15 no further indictments should be forthcoming against Mr.
16 Marando in view of his health, in view of his condition, in
17 view of the fact of what he has gone through, and Mr. Walker
18 didn't go along with that, I must say that.

19 However, we did agree that prior to any indictments
20 coming down I would be given --

21 THE COURT: Not coming down, coming up.

22 MR. MEISSNER: Coming up, I'm sorry, your Honor.

23 THE COURT: They are handed up, not down.

24 MR. MEISSNER: -- that is, against Mr. Marando, then
25 I would be given the opportunity to rebut any information

EDITOR'S NOTE

Pages 13 were missing at time of filming. If, and
when obtained, a corrected fiche will be forwarded to you.

1 physically and he just can't stand getting indicted time
2 after time after time.
3

4 Then I was also informed by the attorneys for Mr.
5 Marando in the new matter, and who were going to substitute
6 in this matter, that they were informed by Mr. Walker that
7 they would, that is, the Justice Department or Mr. Walker or
8 the U.S. Attorney, would continue to indict and indict Mr.
9 Marando until such time as some judge could be found some-
10 place that would put him in jail.

11 Now, your Honor, in view of those facts -- of course,
12 Mr. Marando knows everything that I just informed your
13 Honor -- in view of these circumstances, and in view of these
14 facts, Mr. Marando told me that how could he plead guilty to
15 a case when he would only be indicted and indicted again and
16 again; he would be ruined physically, mentally and financially.

17 Even if he never was found guilty that would be the
18 end of Mr. Marando one way or the other.

19 And your Honor, it is because of these circumstances
20 that I told Mr. Marando that I don't think in good faith I
21 can continue to represent him, because apparently the U.S.
22 Attorney's office wants to throw me in with Mr. Marando, and
23 Mr. Marando in some how connected with the political organ-
24 ization in Brooklyn, and anybody else that they can do it
25 with, and I think that it is quite unfair for a lot of

innocent people to get hurt: and innocent names to be thrown into the newspapers, people of importance, people who have standing in the political community as well as in the community in general, and I know that if you can't stand the heat you should get out of the kitchen.

But, your Honor, I don't believe that just because you are in politics that it is open season to throw your name around and besmirch it to your family, your friends and everybody else.

And I submit, your Honor, that there is no evidence whatsoever, and your Honor, I submit that there was a violation of law in leaking information from a grand jury proceeding.

Now, we have seen this before coming out of this courthouse, your Honor. When I mean the courthouse, your Honor, I mean --

MR. WALKER: Unless Mr. Meissner has anything special to say, I see no reason for him to make the rambling accusation.

THE COURT: I want to give counsel a chance to present the statement but I do think, Mr. Meissner, we should get to the point.

MR. MEISSNER: In view of this, your Honor, I don't see how I can properly represent Mr. Marando; in view of this,

I feel I should be given the opportunity to withdraw from this case. I believe that his new counsel, who knows all these facts and has been working on documenting them, and Mr. Marando has prepared certain documents that he wants to turn over to his new counsel, I think that his new counsel should be given, your Honor, an adjournment for the purpose of filing this motion in writing so that the U.S. Attorney's office should have the full and complete opportunity to put their money where their mouth is.

In other words, to put in in writing as to what is the truth and what is not the truth. What the U.S. Attorneys have been doing and have not been doing in these cases; whether or not they are going to subject this man to this type of treatment which is cruel and inhuman by any measure, your Honor, or whether or not maybe all of this is just something that I dreamt up. But surely I think the charges are serious enough, your Honor, that they should be answered and answered in writing and I think everybody should be given the opportunity to get these answers from the U.S. Attorney's office.

Therefore, your Honor, I respectfully renew my application for permission to withdraw and to grant a motion to have Mr. Caplan substituted in my behalf and that he be given a reasonable period of time to submit this motion in

2 writing.

3 THE COURT: That motion I feel obliged to deny and
4 it is denied.

5 Now, Mr. Walker, do you want to tell me anything
6 about the sentence of Mr. Marando? That's the only matter
7 before me this afternoon.

8 MR. WALKER: Very well, your Honor. Mr. Marando
9 is before your Honor having plead guilty to information
10 73Cr1037?

11 THE COURT: Right.

12 MR. WALKER: This information charged Mr. Marando
13 with having conspired to engage in an extortionate loan
14 transaction and Mr. Marando entered his plea to that.

15 He pleaded guilty before your Honor on November 15,
16 nearly two full months ago.

17 Now, your Honor, it is the government's view that
18 conspiring to violate the federal laws relating to extor-
19 tionate credit transactions is a serious offense. I am aware
20 that your Honor has a full and complete pre-sentence report
21 covering the activities of this man. Therefore, as far as
22 Mr. Marando's sentence is concerned I have nothing further
23 to add, further than what is already contained in the pre-
24 sentence report before your Honor at this time.

25 THE COURT: Mr. Meissner, addressing yourself to

the question of sentence, is there anything you would like to tell me on behalf of Mr. Marando now?

MR. MEISSNER: Well, your Honor, I would like to make a request, if possible, to see the pre-sentence report?

THE COURT: Well, and I would normally, if we had time, give it to you. I think I have to tell you that there is nothing in it which is significantly adverse except the recital of other charges, some of which are pending without any disposition.

I am told that there was -- you see, Mr. Marando appeared before Judge Motley --

MR. MEISSNER: That's right, your Honor.

THE COURT: -- and there was a pre-sentence report at that time. The probation office has given me that pre-sentence report, and I have read the minutes of the sentencing before Judge Motley. And she revealed that in 1950 Mr. Marando had been convicted for receiving stolen goods and he was given an opportunity to talk about that; I think it was a question of some appliance.

MR. MEISSNER: A typewriter.

THE COURT: A typewriter, I remember, and in 1951 a charge of larceny in Brooklyn was dismissed. In 1952 he was charged with conspiracy in Brooklyn and was acquitted.

MR. MEISSNER: Your Honor, that particular charge

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we know nothing about.

THE COURT: And remember, as I told you, I have not taken it into account as any adverse factor in connection with the matter before me.

MR. MEISSNER: Okay, your Honor.

THE COURT: But the pre-sentence report says that in 1952 in Brooklyn Mr. Marando was charged with conspiracy and on July 14, 1953, he was acquitted. That's what it tells me.

MR. MEISSNER: Mr. Marando tells me he never went to trial before this past case so there's no way of clearing it up.

THE COURT: There's no reason to argue about it because, as I say, I am not holding it against him.

I am told that on November 29 there was an indictment returned charging stock fraud. That's the matter about which you have spoken.

MR. MEISSNER: That's right, your Honor.

THE COURT: That that is pending and apparently is assigned to Judge Bonsal.

MR. WALKER: That's correct, your Honor.

MR. MEISSNER: That's right.

THE COURT: As I say, if it would really make any difference, I would stop and let you read this but there isn't

2 anything significantly adverse.

3 I am told here that Mr. Marando has a good family
4 life, he has two teen-age sons, he and his wife have ap-
5 parently raised the two boys properly. He seems to have a good
6 family life and according to Judge Motley's sentencing min-
7 utes she found that his good qualities outweighed the bad.

8 So I don't really deny your motion to look at the
9 pre-sentence report except I just don't think it means any-
10 thing significantly adverse to Mr. Marando.

11 MR. MEISSNER: Well, then, your Honor, may I
12 address myself to what I consider a very important factor?
13 And that is, I doubt very much if your Honor will recall
14 but when this case came up for a conference before your
15 Honor, going back to within a short time after the indictment
16 came out, I had asked your Honor about a motion to consolidate
17 this case with the case that was ultimately tried by Judge
18 Motley.

19 Your Honor referred me to make the motion before
20 Judge Motley since she had multiple counts running into, I
21 think, 22 counts, et cetera.

22 I did that, your Honor, and Judge Motley denied
23 my motion, since she said that "Well, this is not related
24 to that," although I pointed out to Judge Motley that this
25 took place at the Kelly, Andrews premises, the same people

1 who were involved, the same issues were involved, and this
2 was induced, this loan, was induced by the Kelly, Andrews
3 people, because they desperately needed money, and that they
4 threatened Mr. Marando that unless he got them some money
5 that he would loose the stock which they were holding.
6

7 However, Judge Motley saw fit to deny the motion.

8 However, during the course of this trial before
9 Judge Motley the government saw fit to make hay with this
10 charge and they repeatedly brought out this loan that was
11 made and payable allegedly at the rate of \$500 a week. This
12 loan was testified to by, my recollection is, Mr. Schiffman,
13 Mr. Visani and possibly other witnesses.

14 As a matter of fact, your Honor, I understand --
15 I haven't seen it myself -- but I understand from someone
16 who has Mr. Walker's brief on the appeal pending in the case
17 trief before Judge Motley mentions this \$25,000 extortionate
18 loan on numerous occasions.

19 Now, I respect your Honor too much to say that I
20 contend that this is res adjudicata but, your Honor, and I
21 know that your Honor knows full well the influence that these
22 types of allegations have on a jury, and I respectfully sub-
23 mit, and I know, of course, I am speculating, there's no way
24 to really tell, but I respectfully submit that the government
25 got their ounce of flesh or their pound of flesh on this so-called

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2 extortion in that trial before Judge Motley, and I respect-
3 fully submit that that had a great deal of influence in
4 having that jury come back with a finding of guilty on some
5 of the charges.

6 It was mentioned, by the way, in Mr. Walker's clos-
7 ing argument very ably.

8 But I really want to point out something further
9 than that, and I know that the probation officer has that inform-
10 ation, whether or not he forwarded it to your Honor, I don't
11 know, but Mr. Marando got involved in this nest of thieves
12 at Kelly, Andrews when he was asked to loan his stock, worth
13 approximately \$300,000, to them, to Schiffman, and then it went
14 into Kelly, Andrews & Bradley. When he gave over that stock
15 he didn't request nor did he receive one single penny of
16 interest. That is the testimony of Mr. Schiffman, the re-
17 cipient of that stock.

18 Thereafter, when they violated their agreement
19 with Mr. Marando and failed and refused to return this
20 stock, this stock, Brooklyn Poly Industries, as per Mr. Schiffman's
21 agreement that he would return it in kind, actually certifi-
22 cate by certificate within three months, they then gave him
23 a written acknowledgment because he didn't even have a
24 receipt that they had taken the stock.

25 They then gave him a written acknowledgment that they

2 had the stock --

3 MR. WALKER: Your Honor, May I: If this is rel-
4 evant to the sentence, it comes as a surprise to me. This
5 is all gone into in another case and unless I am given the
6 opportunity to rebut these statements bit by bit and state-
7 ment by statement, then serious misrepresentations are
8 being made. We will be here all day.

9 THE COURT: We will be here as long as it is
10 necessary.

11 Go ahead, Mr. Meissner, but let's get to the point.

12 MR. MEISSNER: Well, your Honor, this is getting
13 to this particular loan. When they refused to return --

14 THE COURT: I know, I know, he pleaded guilty
15 before me to the charges in this information.

16 MR. MEISSNER: Yes, your Honor.

17 THE COURT: I don't think it is greatly relevant,
18 all this now.

19 MR. MEISSNER: Except I am getting to that point now.

20 THE COURT: Besides I have read all the material
21 that has been submitted by Mr. Marando through the probation
22 officer to me.

23 MR. MEISSNER: Oh, I see.

24 THE COURT: All this is gone into in these thick
25 volumes --

1 MR. MEISSNER: Oh --

2 THE COURT: -- which I have read.

3 MR. MEISSNER: Right. It was at this point, your
4 Honor, that Mr. Marando was told that they were in trouble
5 and if he doesn't get them a \$25,000 loan he would loose his
6 stock.
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8 I was only trying to point out to your Honor as to
9 how this so-called extortionate loan came about. In my eyes,
10 your Honor, Mr. Marando was extorted into making this loan.

11 At any rate, your Honor --

12 THE COURT: He pleaded guilty and he told me that,
13 and we went over it very carefully, the information, and in
14 fact it was corrected by Mr. Marando and by you in the
15 hearing before me and it is shown in pen and ink on the in-
16 formation.

17 MR. MEISSNER: Yes, your Honor.

18 THE COURT: And he said that it was true as cor-
19 rected.

20 MR. MEISSNER: That he did make that loan, yes,
21 your Honor, noquestion about it.

22 THE COURT: That he violated the law.

23 MR. MEISSNER: Yes, your Honor.

24 THE COURT: And he pleaded guilty because he
25 believed he was in fact guilty.

MR. MEISSNER: Your Honor, I merely want to point out that there was no violence of any kind or nature involved in this transaction, none whatsoever. Now, technically there may be a legal violation, because of the interest rate, et cetera, but there was no violence whatsoever involved here.

Now, may it please your Honor, when a man is losing his life's savings, \$300,000, then he has this loan extorted out of him, and then he is thrown in with a bunch of thieves who admittedly pulled all sorts of shenanigans and all cut up, all sorts of money, without him getting one single nickle out of the process that they obtained unlawfully and illegally and admittedly.

Your Honor, we find ourselves today with Mr. Marando a few months since the last trial, since the last time he was sentenced, his physical condition I am sure your Honor is aware of.

THE COURT: Yes.

MR. MEISSNER: It's been verified by the Veterans Hospital, by the doctors at the Veterans Hospital, and I know that if the probation department gave your Honor those records then I know your Honor is familiar with the fact that he is receiving a disability pension from the government, your Honor, and the man has lost his job, he has lost his health,

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he must undergo open heart surgery with a bypass operation
3 in order for him to have a chance at living, your Honor.

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In view of all these factors, in view of the fact
that basically this charge here really was covered fully by
the prior charge, and Judge Motley was fully familiar about
this situation, I respectfully request that your Honor take
that into consideration, since actually he really has already
been sentenced for this very crime.

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Thank you, your Honor.

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THE COURT: Mr. Marando, is there anything you
would like to say on your own behalf or any information you
would like to give me in mitigation of punishment?

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MR. MARANDO: Your Honor, I have been victimized
myself, cheated, extorted and lied to by four attorneys, not
two, one accountant, and three licensed Wall Street brokers.
When I loaned this individual, an attorney who specialized
in securities, all my stock it was repeatedly promised that
it would never leave my name, that stock would go into my
account and that he would return it in a maximum of three
months.

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He also stated that if I wanted return of the stock
all I would have to do is give him one week notice.

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Subsequently, I found that within that three-month
period he was selling my stock and he said in order to get

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the stock back he needed \$25,000. To save my stock I gave him \$25,000. I never received the stock, not one share, nor \$25,000. They paid me, yes, they did, but not \$500 a week, your Honor, that is erroneous. The dates on this indictment are also false and misleading.

When I sued these individuals they came to me and laughed when I served them with a summons and ^{they} said "We will go bankrupt."

Mr. Scheer, who has perjured himself repeatedly in documented testimony after taking an oath and sitting in a chair, sitting there empty today, laughed at me and said he would go to Arizona.

Mr. Miller, who has perjured himself repeatedly and I have the documentation here which you don't have in that catalogue, has perjured himself in this building several times and documentary evidence submitted to the Securities Commission and the NASD.

Mr. Schiffman has blatantly lied in the All State trial, and I would like to touch base for just a brief moment on the All State situation.

I was convicted of mail fraud, your Honor. I never heard of All State stock in my life until two weeks prior to Kelly, Andrews going out of business. I sat in on a meeting, yes, I did, but I never rigged a stock when I sat in on that

meeting. It was \$10 a share. It was \$10 a share when they went out of business. How was I ever convicted in this building of mail fraud and rigging of a stock is something I will never realize. It is a nightmare.

Now, I went, as far as this loan was concerned, I have been tried, your Honor, I have the record here in this courtroom if you wish to look at it. Mr. Walker made a strongpoint of it. When we tried to introduce evidence these witnesses had perjured themselves, lied through several ^{trials} times, Mr. Walker made a speech. He said we can't have a trial within a trial. But it was a trial within a trial when it came to myself.

Word has come back to me, we will not indict you anymore, Mr. Marando, if you give us certain political figures or certain union people.

I have worked from the day I was born. I never cheated a man in my life. I feel very much ashamed and I feel very dirty. That's all I have to say.

THE COURT: Well, the matter before me is the sentence on the one count of the information 73Cr1037. The clerk asked me if the changes in pen and ink were on the information at the time of the pleading, and I have had the minutes of the pleading read to me today and these changes weremade and initialed at the time of the pleading.

1 Mr. Marando pleaded guilty to this information on
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3 November 15, 1973. There has been an earlier seven-count
4 indictment, 73Cr599, which was set for trial on November 26,
5 1973, by me. There had earlier been trial delays because
6 of the state of health of Mr. Marando.

7 And then at the request of the Assistant U.S.
8 Attorney and of Mr. Marando and of Mr. Meissner, this matter
9 was considered by me at 12:45 p.m. on November 15, 1973. At
10 that time the Court was advised that an information would
11 be filed in place of the indictment and that the defendant
12 wanted to plead guilty to that information. And in open
13 court we went carefully over the information and at the
14 suggestion of Mr. Marando and of his counsel certain changes
15 in the interest of accuracy were made in the information
16 before the plea of guilty was taken.

17 Now, I have read the pre-sentence report which I
18 have earlier described and I have read the various papers
19 submitted by Mr. Marando through the probation office.

20 Now, I should ask Mr. Marando and Mr. Meissner,
21 do you want these returned to you now or do you want them
22 made a part of the probation office file? I have read them.

23 MR. MEISSNER: Well, Mr. Marando prepared them. I
24 really don't know what is in there, but he will take them
25 back, your Honor. There's no need to attach them.

THE COURT: Mr. Clerk, will you give them back.

MR. MEISSNER: Thank you very much.

THE COURT: All right. Now, the question, of course, is what is a proper sentence? It does seem to be true that there is some overlap between the charges in the information to which Mr. Marando pleaded guilty here and the charge in the indictment on which he was sentenced by Judge Motley, 73Cr79.

Judge Motley, at pages 23 and 24, seems here to indicate, if I understand it correctly, that this offense, to which Mr. Marando has pleaded guilty, involves, as she says at page 24 of the stenographic minutes of the sentencing, "substantially this same offense," and she said "The Court will take that into consideration in imposing sentence."

Also, it is true that, as Judge Motley said in sentencing then, Mr. Marando's good qualities apparently outweigh his bad. He's had overall a good family life and, as I mentioned earlier, raised two sons of college age properly.

Also, he is apparently in poor health, and under all the circumstances it seems to me that there's no reason for me to commit him on this offense as contrasted with the offense on which Judge Motley sentenced him.

I think, therefore, that under all the circumstances

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on the one count of the information to which Mr. Marando pleaded guilty I am going to commit him to the custody of the Attorney General for five years, but I am going to suspend the execution of the sentence of imprisonment and place him on probation subject to the standing probation order of the Court for a period of five years, also.

All right, Mr. Clerk, the next matter.

MR. MEISSNER: Thank you very much, your Honor.
I appreciate your Honor's indulgence.

MR. WALKER: Thank you very much, your Honor.

THE COURT: All right.

MR. MARANDO: Your Honor, I wish to thank you.

THE COURT: Yes, Mr. Marando?

(Pause.)

MR. MEISSNER: Your Honor, I forgot to move to dismiss the indictments, your Honor, because we left them pending the sentence.

THE COURT: I am afraid you will have to persuade the government to file a nolle prosequi. I can't dismiss it.

MR. MEISSNER: Normally we make a motion after the sentence to dismiss the indictments --

THE COURT: I can't do it, Mr. Meissner.

MR. MEISSNER: The government usually consents.
That was the purpose of this.

2 THE COURT: Well, they aren't here to consent and --

3 MR. MEISSNER: Would your Honor mind if I called
4 Mr. Walker? I mean normally that's what they do. I don't
5 think there will be any problem.

6 THE COURT: As far as I am concerned, I would like
7 to get it off my calendar.

8 MR. MEISSNER: Yes.

9 THE COURT: But normally I really have no authority
10 to dismiss an indictment except for failure to prosecute,
11 and what happens is the government normally files a nolle
12 prosequi. But if you can get them properly to come in here
13 and consent to my dismissing it, I certainly will do it.

14 MR. MEISSNER: In the Eastern District I know we
15 do that. I better check with Mr. Walker, maybe they have dif-
16 ferent proceedings there. They seem to do a lot of things
17 different in the Southern District.

18 THE COURT: Well, I have looked it up frequently
19 and I often want to dismiss indictments but I have never found
20 any authority for my doing it.

21 MR. MEISSNER: Where there is an information sub-
22 stituted.

23 THE COURT: Right.

24 MR. MEISSNER: I will check with Mr. Walker.

25 THE COURT: I certainly won't stand on technicalities

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and if you and he can come in some day perhaps during the luncheon recess I will be glad to see you.

MR. MEISSNER: Fine.

THE COURT: And we can dispose of it, but I think technically there is a problem.

MR. MEISSNER: Very good. I will speak to Mr. Walker.

Thank you very much, your Honor.